

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7378

In Re: MICHAEL BURNS,

Petitioner.

On Petition for Writ of Mandamus. (CR-03-30)

Submitted: February 23, 2004

Decided: March 12, 2004

Before WILKINSON, LUTTIG, and TRAXLER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Michael Burns, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Michael Burns petitions this court for a writ of mandamus directing the district court to act on three pro se motions Burns filed in a criminal case. After Burns filed the mandamus petition, he received a 126-month sentence in that case, and criminal judgment was entered on the district court's docket. To the extent that Burns claims the district court did not rule on the motions, we note that the denial of a pending motion may be implied by the entry of final judgment. See Norman v. Apache Corp., 19 F.3d 1017, 1021 (5th Cir. 1994). The mandamus petition is therefore moot. Further, mandamus may not be used as a substitute for appeal. In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). Accordingly, while we grant Burns' motion for leave to proceed in forma pauperis, we deny his mandamus petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED